SUPREME COURT, U. S.

No. 362

In the Supreme Court of the United States

OCTOBER TERM, 1969

JOSEPH A. WHITE, JR., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1969

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JOSEPH A. WHITE, JR., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. 29a–41a) is reported at 410 F. 2d 773.

JURISDICTION

The judgment of the Court of Claims was entered on May 16, 1969. On August 14, 1969, Mr. Justice Black extended the time within which to file a petition for a writ of certiorari to and including September 8, 1969, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

365-504—69

QUESTION PRESENTED

Whether the Court of Claims correctly determined the amount of damages to which petitioners were entitled as a result of the government's partial breach of a contract for the sale of real property.

STATEMENT

This case involves a sale by the General Services Administration of two contiguous parcels of land, containing about 32 acres, which were determined to be surplus to the needs of the United States. Petitioners entered into a contract of sale with G.S.A. on June 8, 1962, which specified that the land was subject to two 20-foot railroad easements running along the northern boundary of the property. As a result of a lack of coordination among the personnel of the General Services Administration, rather than of any intentional wrongdoing (Pet. App. 32a), the petitioners' contract was inconsistent with a contract which had been entered into three months earlier with the Southern Pacific Company in which the G.S.A. had agreed to sell an undivided 79-foot easement for railroad tracks, which included the two 20-foot easements reserved in petitioners' contract as well as the strip of land between them. Faced with this dilemma, the General Services Administration determined that it would honor its earlier contract with the Southern Pacific Company, whereupon the petitioners brought an action in the district court to compel the G.S.A. to execute a deed to the property which conformed to their contract. This action was ordered dismissed on the ground that the United States was a necessary

party to the suit. *White* v. *Administrator of General Services Administration*, 343 F. 2d 444 (C.A. 9). Thereafter, the present suit for damages was instituted in the Court of Claims.

The Court of Claims determined that the issue before it was the factual question "what difference, if any, exists between the fair market value of the property" subject to the two 20-foot easements specified in the contract and to the single 79-foot easement reserved in the deed (Pet. App. 35a). The court found that all petitioners lost as a result of the breach of contract was the narrow 39-foot strip between the two easements, containing 2.6 acres, and that there was no evidence of any use to which plaintiffs could have put this strip (Pet. App. 40a–41a). The court concluded that petitioners were entitled to $7,300 in damages for the loss of the medial strip, which "reflects a finding that the difference in the two values is relatively slight because the difference in the burdens on the servient tenament as between the two easements is likewise slight" (Pet. App. 35a).

ARGUMENT

As the Court of Claims correctly stated, this case involves a factual determination of the diminution in the value of land resulting from the government's failure to convey title to a narrow strip of land between two railroad easements. The court concluded that the plaintiffs suffered minimal damages, in view of the absence of evidence of any use to which the strip could be put to enhance the value of the much larger

tract from which it was separated. There is no occasion for further review of the court's resolution of this factual question.

Contrary to petitioners' argument, there is no inconsistency between the court's findings and its conclusion as to the amount of damages suffered by petitioners. As the court recited in its findings (Pet. App. 26a–27a; see Pet. 4–5), petitioners' claim for $170,000 in damages reflects a loss of anticipated profits premised on the expectation that petitioners would have been able to construct five access roads across the two railroad tracks which were the subject of separate easements in the contract; petitioners contended that the sale to the railroad of an easement for the medial strip, on which it contemplated the construction of two additional tracks, defeated petitioners' expectation because the railroad then was willing to agree only to a more limited, and more expensive, arrangement for access roads. The court specifically found, however, that petitioners' expectation was unjustified, in view of the fact that the construction of access roads required a separate agreement with the railroad, which intended to continue using the tracks, and that there was no substantial evidence that petitioners could have secured the railroad's agreement to allow five crossings, or any other less expensive arrangement, even if the larger easement had not been granted (Pet. App. 54a).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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